IN THE HIGH COURT OR JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.78 OF 1990

The State of Maharashtra
through the Special Land
Acquisition Officer, Panvel,
Dist.Raigad. .. Appellant
(Original Opponent)

Versus

Shri Sadu Shivram Mhatre .. Respondent
(Original Claimant)

Adv. Mrs. Geeta Mulekar for the Appellant
None for the Respondent

CORAM : S.R. SATHE,J.
DATED : 02/08/2007

ORAL JUDGEMENT :-

1. The State of Maharashtra has preferred this appeal against the judgement and order passed by the Civil Judge Senior Division Raigad-Alibag in Land Acquisition Reference No.136 of 1987 whereby the amount of compensation awarded by the Special Land Acquisition Officer (hereinafter referred to as SLAO) was increased from Rs.3.50/- sq.meter to Rs.16/- and Rs.15/- per sq.meter in respect of the claimant's land bearing Survey No.131/1A admeasuring 20R and 143/3 admeasuring 1R respectively, situated at village Kamothe, Taluka : Panvel.

2. The brief facts giving rise to this appeal are

as under :-

The SLAO, metro center No.XII Panvel, District Raigad acquired the lands under reference for New Bombay project and notification under section 4 of the Land Acquisition Act (hereinafter referred to as “the said Act”) came to be issued on 03/02/1970. The necessary publication in the gazzete was made on 25/07/1972. In reply to the notice under section 9 of the said Act, the Claimant did not claim any specific amount. The SLAO after taking into consideration all the relevant factors for the determination of the fair market price awarded compensation at the rate of Rs.3.50/- per sq.meter. The claimant Sadu Shivram Mhatre took the said amount under protest. The date of award was 26/08/1986 and possession was taken on 17/09/1986.

3. The claimant filed reference No.136 of 1987 under section 18 of the said Act and made a grievance that the awarded price was unreasonable and grossly inadequate. According to him, the land under reference is situated near Panvel town and at some distance from Bombay-Pune National Highway. Petrol pumps are situated at a distance of 2 k.m. from the land in question. Gaothan of village Kamothe is near from the land under

reference and it is adjacent to Jawahar Industrial Estate. It was claimant's case that development in the said area had started since the date of notification. He was in fact getting income of about Rs.5000/- to 6,000/- per year per acre out of the said land. The infrastructural facilities such as water, electricity etc. were available and the land in question had NA potentiality for industrial, commercial as well as residential development. He, therefore, claimed market value at the rate of Rs.25/- per sq. meter for the land under reference.

4. The opponent SLAO filed Written Statement at Exh-6 and resisted the claim. It is contended by the opponent that land in question is not NA land. It has no approach road. So, considering the level and situation of the land the compensation awarded was reasonable and adequate. Besides this, it was determined after taking into consideration the sale instances of the relevant period in respect of the lands nearby the land under reference. The opponent therefore contended that the reference be dismissed.

5. On these pleadings, the learned Civil Judge Senior Division, Raigad-Alibag framed issues at Exh-7.

In order to prove his case the claimant examined his son Shankar Sadu Mhatre at Exh-22 and land valuer J.N. Kulkarni at Exh-24. He also produced valuation report Exh-25 alongwith map Exh-26 drawn by the valuer. As against this, no oral evidence was adduced by the opponent.

6. After considering the evidence adduced by the claimant and the relevant factors, the SLAO found that the lands in question are situated adjacent to extended municipal limits of Panvel. Having regard to the market price determined by the High Court in respect of the lands in that locality, the learned Civil Judge Senior Division came to the conclusion that the amount of compensation determined by the SLAO was grossly inadequate. On the basis of price determined in other cases arising out of the same locality he fixed the market price at Rs.16/- per sq.meter for the area of 2000 sq.meters and Rs.15/- per sq.meter for the area of 100 sq.meters and awarded the compensation accordingly with additional component under the Act as per the provisions of section 23(1)-(A), 23(2) and section 28 of of the said Act.

7. Being aggrieved by the above mentioned order

the State of Maharashtra preferred the present appeal. The claimant also filed cross objections. However, there was delay in filing cross objections and the application for delay was dismissed by this Court *(CORAM : R.M.S. KHANDEPARKAR AND A.V. MOHTA,JJ.)* on 21/06/2005 and thus, cross objections were not registered.

8. In this appeal before me, Mrs. Mulekar, learned AGP submitted that land in question is far away from the Bombay-Pune National highway and is at low level. It is also surrounded by agricultural land and as such, the compensation awarded by the learned CJSD, Raigad is unreasonable. Ofcourse, at the same time, she fairly submitted that the Division Bench of this Court *(CORAM: F.I.REBELLO AND S.R.SATHE, JJ.)* has granted compensation in respect of different groups of lands situated within Panvel municipal area and round about and the said Court has fixed market price after taking into consideration distance of the lands from National highway. So, the market price determined by the said Court can be considered in the case at hand. So far as the Respondent original claimant is concerned none appeared on his behalf though, notice of this appeal was served on him.

9. While considering the question as to whether compensation awarded is correct or not and what should be the correct compensation, one has to take into consideration the provisions of Section-23 and 24 of the said Act which lay down matters to be considered in determining compensation and the matters which are required to be neglected in determining compensation, respectively. The most crucial question that always falls for consideration in such case is, what is the market value of the acquired land. It must be determined by reference to the price which a willing seller might reasonably accept from a willing purchaser. It is also well settled that such consideration must be confined to the date of notification under section 4(1). Recognized method for determining the correct market value is to find out comparable instances of sale. Even while doing so, only genuine instances have to be taken into account. Besides this, it is necessary to see and consider the said instances of sale keeping in mind the proximity of time, proximity of situation and plus minus factors of the comparable instances of sale as well as the land in question.

10. It is not in dispute that the land under reference is situated at village Kamothe and it is acquired for new Bombay project. In order to point out the peculiarities of the land in question the claimant is relying on the oral evidence of Shankar Mhatre Exh-22 and land valuer J.N. Kulkarni Exh-24. The valuer has also filed his report and the map at Exh-25 and 26 respectively. From the evidence adduced on behalf of the claimant, it is very clear that the lands under reference are adjacent to extended municipal limits of Panvel and it is at a distance of 1260 and 1360 meters from Bombay Pune National highway. The Sion-Panvel highway is only at a distance of 360 meters and 560 meters. Admittedly, Jawahar Industrial Estate is 400 meters away from the lands in question and Panvel Industrial Estate is at a distance of 2480 meters. Panvel S.T. stand and Panvel Raiway Station are at a distance of 3440 meters and 3600 meters respectively. Thus, the above mentioned topography indicates that the lands are in the vicinity of all important places and industrial establishments. Ofcourse, it does appear that there is no approach road to the land in question and it is not declared NA. It is not in dispute that water facility is available to the said land and electricity facility is available to the abutting

Jawahar Industrial Estate. So, land has certainly NA potentiality for commercial, industrial and residential purpose. Though, it is tried to be suggested on behalf of the SLAO that the land is not having level and as such, there is water logging, suggestion in this behalf is categorically denied by the land valuer and the SLAO has also not adduced any specific evidence in that behalf. Under the circumstances, due weightage shall have to be given to the evidence of the valuer. He has categorically stated that the land in question is plain and no feeling is required. It is true that he inspected the land on 08/10/1987 and was not aware about the position of the same prevailing in 1970 when the notification under section 4 of said Act was issued.

11. From the perusal of the report of the valuer and his evidence it is established that valuer has taken into consideration sale instance of Esso petrol pump which is situated at a short distance from the land under reference. The said transaction is of the year 1967 and the rate per sq.meter was Rs.14.65/-. Admittedly, the above mentioned transaction has been accepted by the Courts in other land references as guide for determination of market value of the lands in

that locality. Ofcourse, it is true that the said Esso petrol pump is not situated in the village Kamothe but it is situated at Kalamboli, which is at some distance. The valuer Kulkarni has also taken into consideration the other sale instance of M/s. Johnson and Nicholson dated 13/09/1963 where the rate was shown as Rs.6/- per sq.meter. He has deposed that MIDC acquired land at the rate of Rs.67 per sq.meters by notification dated 13/11/1964. So, while determining the market price of the land in question the learned Trial Judge has taken into consideration the above mentioned sale instances.

12. It is an admitted fact that on various occasions this Court in several appeals arising out of land references in respect of the lands situated at Panvel and Kamothe determined the market price of the lands. In FA-754-1986 alongwith other appeals Division Bench of this Court *(CORAM : PURANIK AND MOHARIR, JJ.)* on 25/02/1993 determined the market value of the lands situated within municipal limits of Panvel and Kamothe after considering the vicinity of respective lands to the national highway No.4 and other infrastructural facilities available. The said Court awarded compensation by holding the market price within the range of Rs.18/- to Rs.20/- per sq.meter. It must be

noted that the above mentioned judgement was maintained by the Apex Court. It indicates that the Apex Court did not find it necessary to interfere with the market value fixed in the said judgement. However, it appears that the point with regard to 10% deduction for development was considered. Still, the above mentioned Division Bench judgement has to be considered as a guide while determining the price of the land in question.

13. The Division Bench of this Court *(CORAM: F.I. REBELLO AND S.R.SATHE,JJ.)* in FA-757 of 2003 and other companion appeals fixed the market price for each group of lands taking into consideration the distance between the land under reference and the national highway. As per the said judgement, for the land situated within 750 meters from the national highway, market value is fixed at Rs.25/- per sq.meter after considering 10% deduction. For the lands situated between 750 to 1500 meters the market price after deduction was fixed at Rs.23/- per sq.meter. In the instant case, land under reference is at a distance of 1260 meters from Bombay-Pune National highway and 360 meters from Sion-Panvel highway. So, the land in question can be grouped in the later group mentioned above where the price is fixed at

Rs.23/- per sq. meter. However, another important distinguishing factor between the lands involved in the above mentioned First Appeal and the present appeal is that in the above appeals the lands were actually situated within municipal limits of Panvel, while in the instant case the land in question is adjacent to the extended municipal limits of Panvel. So, reducing the market value for this disadvantage the reasonable fair market price is Rs.16/-. So, the market price which is determined by the learned CJSD Raigad-Alibag at Rs.16/- for 2000 sq.meters and Rs.15/- for 100 sq.meters can not be said to be unreasonable or exorbitant. Even if it is tested on the basis of the above mentioned two Division Bench judgements, the same appears to be correct.

14. In this view of the matter, there is no substance in this appeal. Hence, I pass following order:-

O R D E R

The Appeal is dismissed.

Under the circumstances of the case, parties to bear their own costs of this appeal.

(S.R. SATHE,J.)